Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Transitional Service Technology Specific Overlay Trial	)	**CC Docket No. 99-200**
	)	**NSD File No. L-02-03**

To: Wireline Competition Bureau

COMMENTS OF WEBLINK WIRELESS, INC.

WebLink Wireless, Inc. ("WebLink"), by its attorneys, hereby submits its Comments on the Supplemental Information to the Supplemental Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Transitional Service Technology-Specific Service Overlay ("SO"), CC Docket No. 99-200 ("Petition"). The Wireline Competition Bureau of the Federal Communications Commission ("Commission" or "FCC") sought Comments on the Connecticut Department of Public Utility Control ("Connecticut") Petition by Public Notice, DA 02-1292, released on May 31, 2002. Comments were to be filed by June 14, 2002.

WebLink files these comments relating, in part, to Connecticut's January 18, 2002 Petition ("January Petition") since in the interim, the Third Order [1] became effective. In the Third Order, the FCC disregarded its precedent and declined to impose a blanket

prohibition against take-backs. Connecticut has stated in its January Petition that participating carriers in the transitional area codes "should be required" to return their unopened NXXs from the existing area codes to the NANPA and that it "will work with the carriers to assign prospective and *existing* subscribers TNs from the new SOs." [2]

The following is respectfully shown:

I.

INTRODUCTION

WebLink Wireless, Inc. is a leader in the wireless data industry.[3] WebLink has actively participated in earlier proceedings related to Numbering Resource Optimization. In 1994, its predecessor, PageMart, Inc., was one of the Petitioners requesting a declaratory ruling with respect to a service-specific overlay resulting in the Ameritech Order,[4] in which the Commission declared that take-backs were discriminatory and therefore, unlawful. WebLink participated in the Further Notice of Proposed Rulemaking[5] phase of the Third Order proceeding as a member of Personal Communications Industry Association ("PCIA"). Also through its membership in PCIA,

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1 Numbering Resource Optimization, CC Docket No. 96-98 and CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd 252 (2001)(the "Third Order").

2 January Petition at 7. Emphasis Added.

3 The Dallas-based company provides two-way wireless messaging, wireless email, mobile Internet information, customized wireless business solutions, telemetry, and paging to more than 1.5 million business and retail customers. WebLink is the wireless data network provider for many of the largest telecommunication companies in the U.S. who resell services under their own brand names. WebLink's multicast network covers approximately 90 percent of the U. S. population and, through roaming agreements, extends throughout much of North America.

4 Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596, ¶¶20, 37 (1995)("Ameritech Order").

5 Numbering Resources Optimization and Petition for Declaratory Ruling and Request for Expedited Action on July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, CC Docket Nos. 99-200 and 96-98, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 306(2000) ("Second Report and Order" and "Second FNPRM").

it has participated in other significant proceedings related to Numbering Resource Optimization. Additionally, on March 14, 2002, WebLink filed a Petition for Reconsideration of the Third Order, with respect to the Commission's failure to impose a blanket prohibition against mandatory number take-backs in the context of SOs.

II.

THERE MUST BE NO TAKE-BACKS

A. Take-Backs Are Unlawful

In the Second FNPRM, the Commission stated that it tentatively concluded that transitional technology-specific overlays may not include take-backs because of the costs imposed on carriers and their customers, "who would suffer the cost and inconvenience of surrendering their existing phone number, reprogramming their equipment, changing to new numbers, and informing callers of the new numbers." The Commission pointed out that the take-backs would exclusively affect those carriers included in the overlays, and that this would cause disparate treatment and "would thus adversely affect competition."[6] The Commission has an obligation to consider such adverse effects to avoid creating hardships.[7]

In the Second FNRPM, the majority of commenters in the proceeding commended the Commission for its strong position on take-backs and added their own arguments against take-backs. In the Third Order, the Commission reiterated its previous arguments for prohibition of take-backs and acknowledged that most commenters in the

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6 Second FNPRM at 364.

7 See PSWF Corporation v. FCC, 108 F.3d 354, 356 (D.C. Cir 1997), citing Order, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 2460 (1993).

Second FNRPM opposed mandatory take-backs.[8] However, the Commission declined to impose a blanket prohibition against take-backs based on at best speculative rationale,[9] *despite* its positions in both the Second and Third Orders objecting to take-backs and the fact that most commenters opposed mandatory take-backs due to real discrimination to carriers involved in the overlays. Instead, it has instituted a take-back procedure that is convoluted and appears destined for litigation.[10] In fact, in this case, the take-back carve-out by Connecticut with respect to working with carriers to assign "existing subscriber TNs from the new SOs" is ambiguous and provides no explanation as to the process at all.

In the Ameritech Order, take-backs were declared to be unlawful and it therefore follows that any take-backs should be forbidden. Notwithstanding this precedent, in the Third Order, the Commission seemed to reverse its position on the lawfulness of take-backs. Yet, there was no explanation or discussion of the actual facts that had prompted it to change its position. While the FCC can always change its course, it must supply a reasoned analysis in support of such change. [11]

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8 Third Order at ¶88.

9 As rationale, the Commission stated that the take-backs *may* enhance the effectiveness of SOs by freeing up numbering resources in the underlying area code; take-backs *could* increase the life of the underlying NPA, which in turn would preserve the geographic identity of a given area; and creating SOs without freeing up numbering resources in the underlying area code *may* not provide meaningful benefits because the life of the underlying NPA *would not likely* be significantly prolonged, however, on this point the Commission counter-argued that there *could* be some benefit in any event because the demand of additional numbering resources in the underlying NPA would be reduced by the overlay. Third Report at ¶89. (Emphasis added.) Based on this discussion, it is clear that the Commission has no decisive evidence that the underlying NPA would or would not benefit by an SO without a take-back.

10 In its description of the procedure for the states to show necessity for take-backs, the Commission has given no other guidelines, even as to the size of number blocks. Third Report at ¶90.

11 "But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir 1970); See also, AT&T Corporation, v. FCC, 236 F. 3d 729, 736 (D.C. Cir. 2001) ("The FCC

WebLink submits that the Commission's speculative rationale cannot overcome the unlawful and discriminatory effect of allowing *any* take-backs to the specific groups of carriers which would be subject to overlays, under any circumstances. For example, in the Ameritech Order, the Commission found that Ameritech's plan to overlay a nearly exhausted area was discriminatory with regard to wireless carriers because of its exclusion and segregation proposals in the SO. By excluding wireless carriers from access to an area code and segregating them from wireline carriers, Ameritech would have given competitive advantage to wireline carriers who would be able to retain the existing area code for their subscribers.[12] Similarly, the take-back provisions would have given the wireline carriers competitive advantage because the customers of the wireless carriers would "suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers and informing callers of the new numbers."[13] Accordingly, the Commission found that the plan violated prohibitions against unjust or unreasonable discrimination in the Communications Act of 1934, as amended (the "Act"), in particular, Sections 202(a) and 201(b) of the Act. Section 202(a) requires that common carriers cannot make any "unjust or unreasonable discrimination" with "like communication service."[14] Section 201(b) requires that all common carrier "practices, classifications and regulations for and in connection with…communications service…be just and

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'cannot silently depart from previous policies or ignore precedent' citing Committee for Community Access v. FCC, 737 F.2d.)

12 Ameritech Order at 4607.

13 Ameritech Order at 4608.

14 See 47 U.S.C. §202(a).

reasonable…" and declares unlawful "any unjust or unreasonable practice, classification, or regulation."[15]

Thus, the Commission has before it existing precedent which has established, based on the Communications Act, that take-backs are an unjust or unreasonable practice and are therefore unlawful. The FCC should not allow take-backs *of any kind*.

B. Take-Backs Would Further Harm The Paging Industry

Although Connecticut espouses the Commission's past position of prohibition of number take-backs, it lays out two scenarios in which it would require them. WebLink's position is that *any* take-back will be very disruptive and costly to the paging industry in particular, which is struggling to provide competitive choices for subscribers. As the Commission noted in its Sixth Report,[16] the subscribership and revenues in the paging/messaging industry have declined, with the number of one-way subscribers falling 2.2% in 2000 alone. In addition, four of the top five paging companies have filed for bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§101 et seq since January 1, 2000.[17] Another paging company was liquidated under Chapter 7. It is clear then that the paging industry simply cannot afford any additional costs associated with regulatory decisions and the Commission is obligated to consider such industry

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15 See 47 U.S.C. §201(b).

16 Annual Report and Analyses of Competitive Market Conditions With Respect to Commercial Mobile Services, 16 FCC Rcd 13350, 13402-13404 (2001)

17 For example, WebLink Wireless Inc. filed for Chapter 11 bankruptcy May 23, 2001 in the Northern District of Texas, Dallas Division, Case Nos. 01-34275-SAF-11, 01-34277-SAF-11, 01-34279-SAF-11.

disruptions in its regulatory actions. See, for example, First Report and Order, Access Charge Reform.[18/]

[18] First Report and Order, Access Charge Reform 12 FCC Rcd 15985, 16002 (1997).

III.

TEN-DIGIT DIALING

In the May 9, 2002 filing by Connecticut, it stated that it is prepared to require the implementation of ten-digit dialing on a statewide basis, if its SO Petition is granted. WebLink seeks assurances that there would be complete dialing parity in connection with this ten-digit dialing implementation.

If Connecticut does not contemplate dialing parity, WebLink then opposes this implementation on the same basis that it opposes number take-backs. Such a plan would violated prohibitions against unjust or unreasonable discrimination in Sections 202(a) and 201(b) of the Act since it would require some subscribers to be burdened by ten-digit dialing. Accordingly, it would also be unlawful and must be prohibited.

VI.

CONCLUSION

WHEREFORE, For the foregoing reasons, WebLink Wireless respectfully requests that the Commission consider its Comments in the above-referenced proceeding.

Respectfully submitted,

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